

REMARKS

Overview

The claims 1, 2, 5-11 and 13-23 are now pending in the above case. Claims 1, 2, 9 and 23 have been amended.

35 U.S.C. § 112 Rejection

The claims have been amended to obviate the Examiner's 35 U.S.C. § 112 objections. In particular, claims 1 and 2 are amended to clarify the 20%-80% issue. Claim 9 has been amended to clarify the lactic yeast issue, and claim 23 has deleted the term "natural" which the Examiner objected to as indefinite. Applicant's attorney has made a sincere effort to remove all formal objections and believe it has been accomplished.

35 U.S.C. § 103 Rejection

The Examiner has made a combination of references rejection, citing Applicant's commonly owned earlier Gjerlov, U.S. Patent No. 5,397,786 and a corresponding publication Gjerlov, N, WO 85/01444181, in combination with Simone, U.S. Patent No. 5,397,786. The problem with this rejection and why it fails to make the invention obvious is: by the Examiner's own admission Gjerlov does not teach the amino acid preferably accessed from the lactic yeast source and does not teach a composition that further comprises alpha tocopherol (Vitamin E source). Gjerlov then fails to teach anything about the synergism that is the very basis of the present application (see Applicant's published application, paragraph 61). The absence of any teaching in the art

of the synergistic affect of Psyllium and L-glutamine (or other amino acid) on cell growth means it cannot be demonstrated that the invention is obvious. Only by hindsight would one make the combination suggested by the Examiner. There is no teaching that would motivate one to make the combination or when made, of the synergistic result that would achieve (see Rule 132 Declaration). Synergism and unexpected result mean non-obviousness, even after *KSR*.

Reconsideration and allowance is respectfully requested.

Conclusion

Please consider this a Request for One-Month Extension of Time from April 10, 2008 to May 10, 2008 and charge Deposit Account No. 26-0084 the amount of \$60.00 for this extension.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



EDMUND J. SEASE, Reg. No. 24,741
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 22885
Attorneys of Record

- bjh -
Enclosure: Rule 132 Declaration